

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

CONSTANTINO GEORGIOU,

Plaintiff,

v.

SHORE POWER, INC. D/B/A BATTERY
JUNCTION; LG CHEM, LTD.; SHENZHEN
IMR TECHNOLOGY CO., LTD. D/B/A
IMREN AND DOES 1-50,

Defendants.

Civil Action No: 4:21-cv-00418-O
Jury Trial Demanded

DEFENDANT LG CHEM, LTD.'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rules 7.1 and 56.3 of the Local Civil Rules, Defendant LG Chem, Ltd. (“LG Chem”), by and through its undersigned counsel, and subject to and without waiver of its personal jurisdiction defense, hereby moves for summary judgment in favor of LG Chem as to all counts asserted against it in Plaintiff’s Third Amended Complaint, for the reasons more fully set forth in the Brief in Support filed herewith.

SUMMARY

Pursuant to Local Rule 56.3(a), LG Chem provides this summary showing that it seeks summary judgment as to the following claims set forth in Plaintiff’s Third Amended Complaint against it (ECF No. 64):

- **Negligence** (Count One)
- **Strict Liability – Manufacturing Defect** (Count Two)
- **Strict Liability – Marketing Defect** (Count Three)
- **Breach of Implied Warranty of Merchantability** (Count Four)

- **Violation of Magnuson-Moss Warranty Act (Count Five)**
- **Punitive damages.**

Negligence

A products liability claim based on negligence requires a showing that:

1. the manufacturer owed a legal duty to the plaintiff;
2. the manufacturer breached that duty;
3. the plaintiff suffered an injury as a result of the breach; and
4. the defendant's actions were a proximate cause of the injury.

Castillo v. Bos. Sci. Corp., No. 7:20-CV-123, 2020 WL 5608510, at *7 (S.D. Tex. Sept. 18, 2020); *Gerber v. Hoffmann-La Roche Inc.*, 392 F. Supp. 2d 907 (S.D. Tex. 2005) (citing *Mosley v. Excel Corp.*, 109 F.3d 1006, 1009 (5th Cir. 1997)).

Manufacturing Defect

A claim for strict liability manufacturing defect requires a showing that:

1. the product deviated from its intended design in a manner that renders it unreasonably dangerous;
2. the product was defective at the time it left the manufacturer; and
3. the defect was the producing cause of the plaintiff's injuries.

Ford Motor Co. v. Ledesma, 242 S.W.3d 32, 41–42 (Tex. 2007); *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004).

Marketing Defect

The elements of strict liability marketing defect claim are:

1. a risk of harm that is inherent in the product or that may arise from its intended or reasonably anticipated use of the product;
2. the supplier of the product knows or reasonably should foresee the risk of harm at the time the product is marketed;
3. the product has a marketing defect;
4. the lack of warnings or instructions renders the product unreasonably dangerous to the ultimate user or consumer; and
5. the failure to warn or instruct causes the user's injury.

Ranger Conveying & Supply Co. v. Davis, 254 S.W.3d 471, 480 (Tex. App.--Houston [1st Dist.] 2007, pet. denied); *Goodyear Tire & Rubber Co. v. Rios*, 143 S.W.3d 107, 116 (Tex. App.—San Antonio 2004, pet. denied).

Breach of Implied Warranty of Merchantability

A claim for breach of the implied warranty of merchantability requires a showing that:

1. the defendant sold or leased a product to the plaintiff;
2. the product was unmerchantable;
3. the plaintiff notified the defendant of the breach; and
4. the plaintiff suffered injury.

Polaris Indus., Inc. v. McDonald, 119 S.W.3d 331, 336 (Tex. App.—Tyler 2003, no pet.);
Coppock v. Nat'l Seating & Mobility, Inc., 121 F. Supp. 3d 661, 668 (W.D. Tex. 2015).

Magnuson-Moss Warranty Act

“Actions for breach of warranty under the [MMWA] are limited to claims for direct damages only (such as repair, replacement, or refund), as opposed to claims for consequential damages, such as personal injuries, and the Act is therefore inapplicable to products liability cases.”

63 Am. Jur. 2d Products Liability § 624.

Punitive Damages

In Texas, the standard to prove punitive damages in a personal injury case requires the plaintiff to show by clear and convincing evidence that the harm that caused the plaintiff's injury resulted from fraud, malice, or gross negligence.

Tex. Civ. Prac. & Rem. Code Ann. § 41.003.

WHEREFORE, without waiver of its defense that the Court lacks personal jurisdiction over it in this matter, and for the reasons stated herein and fully set forth in its Brief in Support, LG Chem respectfully requests that the Court enter summary judgment in its favor on all claims asserted against it, as well as any and all such further relief as this Court deems fair and equitable.

Dated: November 13, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 13, 2023, a true and correct copy of the foregoing **DEFENDANT LG CHEM, LTD.’S MOTION FOR SUMMARY JUDGMENT** was served on the following counsel of record through the ECF electronic filing system:

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